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*Attorneys for Plaintiff*  
JAMES RAMSEY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES RAMSEY, Individually and on Behalf )  
of All Others Similarly Situated, )

Plaintiff, )

vs. )

MERRIMAK ATM GROUP, LLC, )  
WORLDPAY US, INC., and DOES 1-10, )  
inclusive, )

Defendants. )

Civil Action No.: **'11CV1545 DMS POR**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff JAMES RAMSEY, individually, and on behalf of all others similarly situated  
 2 (“Plaintiff”), alleges upon knowledge with respect to himself and upon information and belief based,  
 3 in part, on the investigation of counsel, as follows:

4 **I. PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action, individually and on behalf of all others similarly situated,  
 6 against Defendants (as defined in ¶ 13, *infra*) alleging violations of 15 U.S.C. § 1693 *et seq.*,  
 7 commonly known as the Electronic Fund Transfer Act (the “Act”), and 12 C.F.R. § 205 *et seq.*,  
 8 commonly known as Regulation E (“Regulation E”), which contains regulations promulgated by the  
 9 Board of Governors of the Federal Reserve System to implement the Act (the Act and Regulation E  
 10 shall hereinafter be collectively referred to as the “EFTA”). Plaintiff also asserts claims against  
 11 Defendants for violations of the California Unfair Business Practices Act, Business and Professions  
 12 Code §§ 17200, *et seq.* (the “UCL”).

13 2. The EFTA establishes the basic rights, liabilities, and responsibilities of consumers  
 14 who use electronic fund transfer services and of financial institutions that offer these services. The  
 15 primary objective of the EFTA and Regulation E is the protection of consumers engaging in  
 16 electronic fund transfers. 12 C.F.R. § 205.1(b). The EFTA requires specific disclosures be given by  
 17 operators of any automated teller machine (“ATM”) to users of an ATM, prior to the imposition of a  
 18 fee for using an ATM. 15 U.S.C. § 1693b.

19 3. The Congressional findings and declaration of purpose regarding the EFTA provides:

20 (a) Rights and liabilities undefined

21 The Congress finds that the use of electronic systems to transfer funds provides the  
 22 potential for substantial benefits to consumers. However, due to unique  
 23 characteristics of such systems, the application of existing consumer protection  
 legislation is unclear, leaving the rights and liabilities of consumers, financial  
 institutions and intermediaries in electronic fund transfers undefined.

24 (b) Purposes

25 It is the purpose of this subchapter to provide a basic framework establishing the  
 26 rights, liabilities, and responsibilities of participants in electronic fund transfer  
 27 systems. The primary objective of this subchapter, however, is the provision of  
 28 individual consumer rights

1           4.     The EFTA specifically requires that an ATM must have a posted notice attached on  
2 or at the machine informing consumers of the imposition of an ATM surcharge. 15 U.S.C. §  
3 1693b(d)(3).

4           5.     This case is brought under the EFTA based upon the fact that Defendants have  
5 imposed ATM fees on Plaintiff and other consumers without providing any posted notice as required  
6 by the EFTA.

7           6.     Plaintiff, on behalf of himself and all others similarly situated, brings this class action  
8 against Defendants based on Defendants' violation of the EFTA. Plaintiff seeks, on behalf of  
9 himself and the proposed class, statutory damages, costs and attorney's fees, all of which are  
10 expressly made available by statute. 15 U.S.C. § 1693m. Plaintiff does not seek actual damages.

## 11                                   II.     JURISDICTION

12           7.     This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337  
13 and 15 U.S.C. 1693m(g) because this action arises under the Electronic Fund Transfers Act, 15  
14 U.S.C. § 1693 *et seq.*

15           8.     Venue in this judicial district is proper under 28 U.S.C. § 1391 in that this is the  
16 judicial district in which a substantial part of the events or omissions giving rise to the claims  
17 occurred.

## 18                                   III.    PARTIES

19           9.     Plaintiff is a natural person who resides in San Diego County, California and used a  
20 certain ATM owned and operated by Defendants (as defined in ¶ 13, *infra*), which ATM is located at  
21 or about Donut Stop, 1418 South Mission Road, Fallbrook, California 92028 (the "Donut Stop  
22 ATM"), within one year of the filing of this Complaint, and was charged an ATM surcharge fee by  
23 Defendants at the Donut Stop ATM described in this Complaint.

24           10.    Defendant MERRIMAK ATM GROUP, LLC ("Merrimak") is a California  
25 corporation authorized and doing business in California, with its principal place of business located  
26 at 5420 State Farm Drive, Suite B, Rohnert Park, California 94928. Merrimak owns and/or operates  
27 the Donut Stop ATM.

11. Defendant WORLDPAY US, INC. ("WorldPay") is a Georgia corporation authorized and doing business in California, with its principal place of business located at 600 Morgan Falls Road, Suite 260, Atlanta, Georgia 30350. WorldPay owns and/or operates the Donut Stop ATM.

12. The true names and capacities of defendants sued herein as Does 1 through 10, inclusive, are presently not known to Plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this Complaint pursuant to Federal Rule of Civil Procedure 15 and include the Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by Plaintiff and the proposed class as a result of defendants' wanton and illegal conduct.

13. Merrimak, WorldPay, and Does 1 through 10, inclusive, are collectively hereinafter referred to as "Defendants."

#### IV. BACKGROUND

##### A. **Electronic Funds Transfer Act**

14. "Electronic funds transfer" is defined as "any transfer of funds . . . which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes . . . automated teller machine transactions . . . ." 15 U.S.C. § 1693a(6); *see also* 12 C.F.R. § 205.3(b).

15. Defendants are an "automated teller machine operator" as that term is defined by 12 C.F.R. § 205.16(a), which states: "Automated teller machine operator means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made."

16. 15 U.S.C. § 1693b(d)(3)(A) and (B), and the implementing regulation, 12 C.F.R. § 205.16(b) and (c), require an ATM operator who imposes a fee on a consumer for "host transfer services" (an electronic fund transfer or a balance inquiry) to provide notice to the consumer of the fee before the consumer is committed to the transaction. Specifically, 12 C.F.R. § 205.16(b) states:

1           *General.* An automated teller machine operator that imposes a fee on  
2 a consumer for initiating an electronic fund transfer or a balance  
inquiry shall:

3           (1) Provide notice that a fee will be imposed for providing  
4 electronic fund transfer services or a balance inquiry; and

5           (2) Disclose the amount of the fee.

6           17. 15 U.S.C. § 1693b(d)(3)(B), and its implementing regulation, 12 C.F.R. § 205.16(c),  
7 specifies the notice to be provided to consumers. 12 C.F.R. § 205.16(c) states:

8           (c) *Notice requirement.* To meet the requirements of paragraph (b) of  
9 this section, an automated teller machine operator must comply with the  
following:

10           (1) *On the machine.* Post in a prominent and conspicuous  
location on or at the automated teller machine a notice that:

11                   (i) A fee will be imposed for providing electronic fund  
12 transfer services or for a balance inquiry; or

13                   (ii) A fee may be imposed for providing electronic fund  
14 transfer services or for a balance inquiry, but the notice in this  
15 paragraph (c)(1)(ii) may be substituted for the notice in  
paragraph (c)(1)(i) only if there are circumstances under  
which a fee will not be imposed for such services; and

16           (2) *Screen or paper notice.* Provide the notice required by  
17 paragraphs (b)(1) and (b)(2) of this section either by showing it on the  
screen of the automated teller machine or by providing it on paper,  
before the consumer is committed to paying a fee.

18  
19           18. Pursuant to this regulation, the notice physically attached to the ATM must comply  
20 with 12 C.F.R. § 205.16(c), either by stating that a fee will be imposed, or if there are circumstances  
21 in which a fee will not be imposed, that a fee may be imposed.

22           19. 15 U.S.C. § 1693b(d)(3)(C), and its implementing regulation, 12 C.F.R. § 205.16(e),  
23 provide that no fee may be imposed by an ATM operating in connection with any electronic fund  
24 transfer initiated by a consumer for which a notice is required unless the consumer is provided the  
25 notices required pursuant to 12 C.F.R. § 205.16(c). Specifically, 15 U.S.C. § 1693b(d)(3)(C) states  
26 in relevant part:

27           (C) **Prohibition on fees not properly disclosed and explicitly**  
28 **assumed by consumer.** No fee may be imposed by any automated  
teller machine operator in connection with any electronic fund  
transfer initiated by a consumer for which a notice is required under

subparagraph (A), unless – (i) the consumer receives such notice in accordance with subparagraph (B); and (ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

Similarly, 12 C.F.R. § 205.16(e) provides that:

(e) *Imposition of fee.* An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if

(1) The consumer is provided the notices required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction or inquiry after receiving such notices.

20. In connection with 2006 amendments to the EFTA, the Board of Governors of the Federal Reserve published its Final Rule and official staff interpretation which, *inter alia*, explained the EFTA's disclosure requirements as follows:

The final rule clarifies the *two-part disclosure scheme established in Section 904(d)(3)(B) of the EFTA. The first disclosure, on ATM signage posted on or at the ATM, allows consumers to identify quickly ATMs that generally charge a fee for use. This disclosure is not intended to provide a complete disclosure of the fees associated with the particular type of transaction the consumer seeks to conduct.* Until a consumer uses his or her card at an ATM, the ATM operator does not know whether a surcharge will be imposed for that particular consumer. Rather, it is the second, more specific disclosure, made either on the ATM screen or an ATM receipt, that informs the customer before he or she is committed to the transactions whether, in fact, a fee will be imposed for the transaction and the amount of the fee....

71 F.R. 1638, 1656 (emphasis added).

21. Thus, the statute and regulation require that a physical notice must be displayed informing consumers that the ATM imposes a surcharge, and that the ATM screen must definitively state that a fee will be imposed, before that fee is imposed.

22. The EFTA imposes strict liability upon ATM operators that fail to comply with its disclosure requirements. *See Burns v. First American Bank*, 2006 WL 3754820, \*6 (N.D. Ill. Dec. 19, 2006). A plaintiff seeking statutory damages under the EFTA need not prove that he or she sustained any actual financial loss, or that he or she relied upon the lack of mandatory disclosure as an inducement to enter into a transaction. *Burns*, 2006 WL 3754820, \*6 (“Section 1693b(d)(3)

1 prohibits an ATM operator from charging a fee unless it provides notice of its fee on the machine  
2 and on the screen, period, no mention of a necessary scienter.”)

3 23. The notice referenced in 15 U.S.C. § 1693f has no arguable applicability to Plaintiff’s  
4 claims because, among other things, Plaintiff is not an account holder of Defendants.

5 **B. Defendants' Conduct**

6 24. Defendants are ATM operators regulated under the EFTA, 15 U.S.C. § 1693 *et seq.*  
7 and 12 C.F.R. Part 205 (Regulation E), as that term is defined in 12 C.F.R. § 205.16(a).

8 25. Defendants are operators of the Donut Stop ATM located at or about 1418 South  
9 Mission Road, Fallbrook, California 92028.

10 26. Defendants are owners of the Donut Stop ATM located at or about 1418 South  
11 Mission Road, Fallbrook, California 92028.

12 27. The Donut Stop ATM permits consumers to perform electronic fund transfers, as  
13 defined in 12 C.F.R. § 205.3.

14 28. The Donut Stop ATM imposes a fee on consumers who withdraw cash from the  
15 Donut Stop ATM.

16 29. Defendants failed to post on or at the Donut Stop ATM a notice that a fee will be  
17 imposed for withdrawing cash or for a balance inquiry, resulting in Defendants’ improper imposition  
18 of a fee to Plaintiff and other users of the Donut Stop ATM.

19 30. Defendants’ failure to post the required notice on or at the Donut Stop ATM has  
20 resulted in frequent and persistent non-compliance with the EFTA. Said violations of the EFTA  
21 have adversely affected hundreds or thousands of consumers.

22 31. Despite knowing of the ATM fee notice provisions of the EFTA, Defendants have  
23 violated the EFTA by failing to post the required ATM fee notice at the Donut Stop ATM and  
24 improperly imposing ATM fees.

25 32. Defendants’ non-compliance with the ATM fee notice requirements of the EFTA, and  
26 subsequent imposition of a fee on Plaintiff and the members of the proposed class, did not result  
27 from a bona fide error.  
28

**C. Plaintiff's Electronic Funds Transfers With Defendants**

33. Plaintiff is a consumer as defined in 12 C.F.R. § 205.2(e).

34. Within one year of the filing of this Complaint, Plaintiff used the Donut Stop ATM described in this Complaint in order to conduct an electronic funds transfer involving the withdrawal of cash.

35. The Donut Stop ATM did not have the fee notice required by 15 U.S.C. § 1693b(d)(3) and 12 C.F.R. § 205.16, as it did not have any sign affixed to it or in close proximity to it informing consumers that use of the Donut Stop ATM will or may result in an ATM surcharge.

36. Plaintiff was in fact assessed a \$1.75 ATM surcharge fee for withdrawing cash from the Donut Stop ATM described in this Complaint.

**V. CLASS ALLEGATIONS**

37. Plaintiff brings this class action on behalf of himself and all other similarly situated persons pursuant to Rule 23(a), (b)(1), (b)(3) of the Federal Rules of Civil Procedure. Plaintiff hereinafter sets forth facts and allegations more specifically in support of his class action allegations.

38. With regard to the EFTA claim, Plaintiff seeks to represent a class of similarly situated persons, consisting of (a) all consumers (b) who initiated an electronic funds transfer at the Donut Stop ATM described in ¶ 9, *supra*, and (c) were assessed a fee for withdrawing cash from the Donut Stop ATM described in ¶ 9, *supra*, (d) on or after the date one year prior to the filing of this action and continuing through the trial of this cause or until Defendants are compliant with the EFTA by posting the appropriate notice (the "EFTA Class").

39. With regard to the UCL claim, Plaintiff seeks to represent a class of similarly situated persons, consisting of (a) all consumers (b) who initiated an electronic funds transfer at the Donut Stop ATM described in ¶ 9, *supra*, and (c) were assessed a fee for withdrawing cash from the Donut Stop ATM described in ¶ 9, *supra*, (d) on or after the date four years prior to the filing of this action and continuing through the trial of this cause or until Defendants are compliant with the EFTA by posting the appropriate notice (the "UCL Class") (both the EFTA Class and the UCL Class are collectively referred to as the "Class").



1           40. Congress expressly intended that the EFTA would be enforced, in part, through  
2 private class actions. 15 U.S.C. § 1693m(a).

3           41. Plaintiff is informed and believes, and thereon alleges, that there are at minimum,  
4 hundreds of members of the Class.

5           42. The exact size of the Class and the identities of the individual members thereof are  
6 ascertainable through Defendants' records. Defendants have exclusive control of this information.

7           43. Members of the Class may be notified of the pendency of this action by techniques  
8 and forms commonly used in class actions, such as by published notice, e-mail notice, website  
9 notices, first class mail, or combinations thereof, or by other methods suitable to this Class and  
10 deemed necessary and/or appropriate by this Court.

11           44. Defendants can generate data for its Donut Stop ATM identifying each transaction in  
12 which a fee was charged. The data will include the date of the transaction, the amount of the fee and  
13 the personal account number ("PAN") for the consumer. The PAN includes a bank identification  
14 number ("BIN"). This information can be used to identify members of the Class.

15           45. The Class is sufficiently numerous to make bringing all parties before the Court  
16 impractical pursuant to Rule 23(a)(1) of the Federal Rules of Civil Procedure.

17           46. Plaintiff's claims are typical of the claims of the members of the Class. The claims of  
18 the Plaintiff and members of the Class are based on the same legal theories and arise from the same  
19 unlawful conduct. Plaintiff and Class members seek recovery of statutory, not actual, damages.

20           47. Plaintiff and members of the EFTA Class were each users of the Donut Stop ATM  
21 since the date one year prior to the filing of this action.

22           48. Plaintiff and members of the UCL Class were each users of the Donut Stop ATM  
23 since the date four years prior to the filing of this action.

24           49. Plaintiff and each member of the Class were illegally charged an ATM fee as a result  
25 of Defendants' failure to comply with the ATM fee notice requirements of the EFTA, thereby  
26 resulting in common questions of law and fact pursuant to Rule 23(a)(2) of the Federal Rules of  
27 Civil Procedure.

28 ///

1           50. Plaintiff and each member of the Class received an inadequate notice regarding the  
2 imposition of an ATM fee by the Donut Stop ATM.

3           51. The questions of law and fact common to the Class predominate over questions which  
4 may affect individual members, including:

5           (a) Whether Defendants were at all relevant times during the class period automated  
6 teller machine operators which imposed a fee on consumers for providing host transfer services to  
7 those consumers;

8           (b) Whether Defendants are the operators of the Donut Stop ATM;

9           (c) Whether Defendants complied, at all times during the class period, with the notice  
10 requirements of 15 U.S.C. § 1693b(d)(3) and 12 C.F.R. § 205.16; and

11           (d) Whether Plaintiff and members of the Class are entitled to statutory damages, costs  
12 and attorney's fees for Defendants' acts and conduct.

13           52. Plaintiff can and will adequately and vigorously represent and protect the interests of  
14 the members of the Class. Plaintiff has no interests antagonistic to the members of the Class.  
15 Plaintiff has retained counsel able, competent and qualified to prosecute this class action litigation as  
16 set forth in Rule 23(a)(4) of the Federal Rules of Civil Procedure.

17           53. Plaintiff and Plaintiff's counsel will fairly and adequately protect the interests of the  
18 Class.

19           54. In support of Plaintiff's allegations pursuant to Rule 23(b)(3) of the Federal Rules of  
20 Civil Procedure, the Plaintiff avers that a class action is superior to other available means for the fair  
21 and efficient adjudication of the claims of the Class. While the aggregate damages that may be  
22 awarded to the members of the Class are likely to be substantial, the damages suffered by the  
23 individual members of the Class are relatively small. As a result, the expense and burden of  
24 individual litigation makes it economically infeasible and procedurally impracticable for each  
25 member of the Class to individually seek redress for the wrongs done to them. Plaintiff does not  
26 know of any other litigation concerning this controversy already commenced by or against any  
27 member of the Class. The likelihood of the individual members of the Class prosecuting separate  
28 claims is remote. Pursuant to Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure

1 individualized litigation would also present the potential for varying, inconsistent, or contradictory  
 2 judgments, and would increase the delay and expense to all parties and the court system resulting  
 3 from multiple trials of the same factual issues. In contrast, the conduct of this matter as a class  
 4 action presents fewer management difficulties, conserves the resources of the parties and the court  
 5 system, and would protect the rights of each member of the Class. Plaintiff knows of no difficulty to  
 6 be encountered in the management of this action that would preclude its maintenance as a class  
 7 action.

## 8 VI. CLAIMS

### 9 FIRST CLAIM FOR RELIEF

#### 10 Against All Defendants for

#### 11 Violation of 15 U.S.C. § 1693 *et seq.* and 12 C.F.R. 205 *et seq.*

12 55. Plaintiff incorporates by reference and realleges each and every allegation contained  
 13 above, as though fully set forth herein.

14 56. Plaintiff asserts this claim on behalf of himself and the Class against Defendants.

15 57. Defendants failed to provide notices to the Plaintiff and the Class as required by 15  
 16 U.S.C. § 1693b(d)(3) and 12 C.F.R. § 205.16(c), and imposed a fee in violation of 15 U.S.C. §  
 16 1693b(d)(3)(C) and 12 C.F.R. §§ 205.16(b) and (e).

17 58. 15 U.S.C. § 1693b(d)(3)(C), and its implementing regulation, 12 C.F.R. § 205.16(e),  
 18 prohibit the imposition and receipt of a fee for conducting an electronic fund transfer unless a notice  
 19 of the fee is posted in a prominent and conspicuous location on or at the ATM.

20 59. Defendants imposed and received a fee in violation of 15 U.S.C. § 1693b(d)(3)(C),  
 21 and its implementing regulation, 12 C.F.R. § 205.16(e).

22 60. As a result of Defendants' violations of the EFTA, Defendants are liable to Plaintiff  
 23 and the Class for statutory damages pursuant to 15 U.S.C. § 1693m.

24 61. As a result of Defendants' violations of the EFTA, Plaintiff and the members of the  
 25 Class are entitled to recover costs of suit and their reasonable attorney's fees.

26 ///

27 ///

28 ///

**SECOND CLAIM FOR RELIEF**  
**Against All Defendants for**  
**Violation of California Bus. & Prof. Code § 17200**

62. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

63. The California Unfair Business Practices Act defines unfair competition to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. Cal. Bus. & Prof. Code § 17200. The UCL provides that a Court may order injunctive relief and restitution to affected members of the general public for violations. *Id.* § 17203.

64. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unlawful, unfair, and/or fraudulent business acts and practices. If Defendants had complied with EFTA, Plaintiff would not have suffered injury in fact and would not have lost money.

65. This cause of action is brought on behalf of Plaintiff, members of the Class, and members of the general public pursuant to California Business & Professions Code §§ 17200, *et seq.* Under Business & Professions Code §§ 17200, *et seq.* Plaintiff is entitled to enjoin Defendants’ wrongful practices and to obtain restitution for the monies paid to Defendants by reason of Defendants’ unlawful, unfair, and/or deceptive acts and practices.

66. Defendants’ actions were knowingly committed and performed with such frequency as to constitute a general business practice.

67. As a direct and proximate result of Defendants’ wrongful acts and practices alleged above, members of the Class and the general public have been wrongfully charged by Defendants. This Court is empowered to, and should, order restitution to all persons from whom Defendants unfairly and/or unlawfully took money.

68. Defendants’ unlawful, unfair, and/or fraudulent business acts and practices, as described above, present a continuing threat to members of the Class and of the general public, in that Defendants are continuing, and will continue, unless enjoined, to commit violations of California Business & Professions Code § 17200. This Court is empowered to, and should, grant preliminary and permanent injunctive relief against such acts and practices.

**REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and the members of the Class, prays for:

- A. An order certifying the Class and appointing Plaintiff as the representative of the Class, and appointing undersigned counsel as Class Counsel;
- B. An award to Plaintiff and the members of the Class of statutory damages pursuant to 15 U.S.C. § 1693m;
- C. A declaration that Defendants' conduct constitutes a violation of California's Business & Professions Code § 17200;
- D. An injunction enjoining, preliminarily and permanently, Defendants from continuing the wrongful conduct alleged herein;
- E. Payment of costs of suit herein incurred pursuant to 15 U.S.C. § 1693m(a)(3);
- F. Payment of reasonable attorney's fees pursuant to 15 U.S.C. § 1693m(a)(3); and
- G. For other and further relief as the Court may deem proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: July 13, 2011

/s/ Mark A. Golovach

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MARK A. GOLOVACH

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*Attorneys for Plaintiff*  
JAMES RAMSEY

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

## I. (a) PLAINTIFFS

James Ramsey, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff San Diego County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Pacific Coast Law Group, Mark A. Golovach, 501 W. Broadway,  
Ste. 800, San Diego, CA 92101 (619) 400-4895

## DEFENDANTS

Merrimak ATM Group, LLC, WorldPay US, Inc., and Does  
1-10, inclusiveCounty of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED

Attorneys (If Known)

'11CV1545 DMS POR

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PROPERTY	WILLS, PROBATE, ESTATE	LABOR, EMPLOYMENT	OTHER
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat. TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract					<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise					<input type="checkbox"/> 890 Other Statutory Actions
					<input type="checkbox"/> 891 Agricultural Acts
					<input type="checkbox"/> 892 Economic Stabilization Act
					<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 894 Energy Allocation Act
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing 15 U.S.C. section 1693, et seq., 12 C.R.F. section 205, et seq.Brief description of cause: Defendants' violation of the Electronic Fund Transfer Act and Regulation E

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

7/13/2011

SIGNATURE OF ATTORNEY OF RECORD

Mark A. Golovach

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.